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CHARLES ELMORE

Supreme Court of the United States

No. 347.

ROBERT L. HATCH,
Plaintiff,

against

MOROSCO HOLDING COMPANY, INC.,
Defendant.

JOHN MARTIN RIEHLE, as Receiver,
Petitioner,

against

EDWARD MARGOLIES,
Respondent.

BRIEF OF RESPONDENT.

NATHAN BURKAN,
Solicitor for Edward Margolies,
Respondent.

GALLO & ACKERMAN, Inc., 142 Liberty Street, 'Phone—Rector 7257-8.

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EDWARD MARGOLIES,

Respondent.

BRIEF OF RESPONDENT.

Statement of Facts.

The Petitioner seeks to reverse the decision of the Circuit Court of Appeals for the Second Circuit (26 F. [2d], 247), which affirmed an order of the District Court for the Southern District of New York, confirming the report of the Special Master in an equity receivership, allowing the claim of the respondent as a creditor, in the sum of $55,101.41.

The issue is a very simple one, and may be summarized briefly as follows:

An action is begun in the state court against a corporation for money damages. Pending that action a receiver for the corporation is appointed by the United States District Court on a simple creditors' bill. The action in the state court thereafter proceeds to judgment, the receiver being notified, but refusing to defend. Must the federal court accept the state court judgment as a conclusive liquidation of the claim?

Respondent, a builder, contracted with Morosco Holding Company, Inc. (hereinafter for brevity called "Morosco Company"), to erect a theatre for it in Titusville, Pa., at a cost not to exceed $172,000 (Complaint, fol. 37; Findings, fol. 73).

Morosco Company defaulting in installment payments which accrued under the contract, on May 18th, 1923, respondent brought suit against the Morosco Company in the Supreme Court of New York, Queens County, for accrued installments, as well as profits that he would have earned, and prayed for judgment in the sum of $124,381.00 [fol. 41].

The summons and complaint in such action were personally served upon the Morosco Company in the City of New York on that day [fol. 43], the Morosco Company duly appeared and answered [fols. 60-64] setting up a counterclaim for $150,000 on which it demanded judgment [fols. 62-64]. Respondent served a reply [fol. 65] and notice of trial [fol. 44] service of which was duly admitted [fol. 44].

On July 23rd, 1923, the plaintiff in this suit, Robert L. Hatch, claiming to be a creditor of the Morosco Company, filed a Bill in Equity against it in the United States District Court, for the Southern District of New York, praying for the appointment of a receiver (Bill of Complaint, fol. 1; fol. 9).

On the same day, the Morosco Company filed an answer, admitting the allegations of the complaint and likewise joined in the prayer for the appointment of a receiver (Answer, fol. 13).

Thereupon John M. Riehle, Petitioner herein, was appointed receiver by District Judge Winslow, by an order dated July 1, 1923 [fol. 23].

The Petitioner in such suit secured orders restraining respondent from prosecuting his action in the State Courts. Thereupon respondent moved in the District Court that the orders insofar as they restrained him from prosecuting his action be vacated. That court denied the motion, and respondent appealed to the Circuit Court of Appeals.

That court reversed the District Court (5 F. [2d], 1015), and held that the stays were improperly made. It stated, however, that the judgment, when obtained, would not be conclusive and binding on the receiver, the petitioner.

A Special Master was appointed by the District Court in such suit to hear and determine claims against the Morosco Company.

Respondent had up to that time filed no claim with the receiver in the District Court, and had never recognized the right of the District Court to litigate his claim.

He was in the State Court before the receiver was appointed, and sought to prosecute his action to judgment in that court. He served notice of his intention to try his action in the State Court on the receiver after the stay was vacated (fols. 55, 58), but the receiver made no attempt to defend in the State Court nor to obtain a judgment on his counterclaim.

Thereupon respondent on May 16, 1925 obtained a judgment in the State Court against the Morosco Company for $55,283.88 [fol. 93].

The Petitioner had defaulted in the State Court.

On May 26, 1925, respondent, for the first time, verified his proof of claim against the Morosco Company, and filed it with the Receiver [fol. 24], as he was permitted to do by an order of Judge Winslow [fol. 24]. Upon objections being made to the claim, a hearing was held before the Special Master, Bern Budd, Esq. [fol. 24].

Respondent, in the proceedings before the Master, offered in evidence an exemplified copy of his judgment. The Petitioner elected to try the claim de novo. This respondent refused to do, stating that he relied on his judgment as a complete adjudication of his claim and of the amount due to him.

Thereupon the Special Master dismissed the claim. The District Court affirmed the proceedings. An appeal was taken to the Circuit Court of Appeals, and that court, in its opinion written by Judge Swan, stated (19 F. [2d], 766, at p. 769, May 9, 1927):

> "For the reasons above stated, we believe the direction in our former mandate to the effect that any judgment which the appellant might obtain in his action in the state court should not affect the right of the receiver to contest the claim de novo was improvidently made."

In its decision that court upheld the contention of respondent that his judgment in the State Court was a complete adjudication of the amount of his claim, but it made one modification only, and that was with respect to the interest, and it held that the District Court had exclusive right to award the proper amount of interest.

It remanded the proceedings to the District Court and thereupon the District Court made an order on July 12, 1927 (fol. 31), permitting respondent to prove his claim against the Petitioner, and directing the Special Master to receive in evidence an exemplified copy of the judgment in the State Court (fol. 32) "as conclusive proof

of the claimant's claim against said receiver," but it directed the Special Master to deduct from such judgment the interest and to allow in lieu thereof interest from the date when the exemplified copy of the judgment was first offered in evidence, to wit, December 14, 1925.

In accordance with this order, another hearing was held before the same Special Master, who received in evidence the exemplified copy of the judgment.

The face amount of the judgment was $49,596.23. The Special Master awarded interest on that amount from December 14, 1925, in accordance with the order of the District Court, which interest amounted to $5,505.18, making the total amount $55,101.41 (fol. 26).

The District Court confirmed the Special Master's report on October 20, 1927 (fol. 33), and allowed the claim of respondent in said amount of $55,101.42 (fol. 34).

From the order of the District Court of July 12, 1927, and from the order confirming the report of the Special Master of October 20, 1927, the Petitioner appealed to the Circuit Court of Appeals.

That court, on May 7, 1928, handed down a Per Curiam opinion affirming the order appealed from (fol. 116), 26 F. (2d), 247. A writ of certiorari was granted by this Court on October 22, 1928 (73 L. Ed., 77).

I.

The respondent's claim, having been reduced to judgment in the State Court, the District Court, as well as the Special Master appointed by that Court, and the Petitioner, were bound to give full faith and credit to such judgment, and the judgment was admissible in evidence as proof of the respondent's claim.

The Constitution of the United States provides in Article IV, Section 1, as follows:

"Full faith and credit shall be given in each state to the public acts, records, and judicial proceedings of every other state. And the Congress may by general laws prescribe the manner in which such acts, records and proceedings shall be proved and the effect thereof."

Pursuant to that section of the Constitution there was enacted Act of Cong., May 26, 1790, c. 11, 1 Stat., 122; Act, Mar. 27, 1804, c. 56, §2, 2 Stat., 299, which were later re-enacted into Section 905 of the Revised Statutes. That section is as follows:

"AUTHENTICATION OF LEGISLATIVE ACTS AND PROOF OF JUDICIAL PROCEEDINGS OF STATE, ETC.

"The acts of the legislature of any state or territory or of any country subject to the jurisdiction of the United States, shall be authenticated by having the seals of such state, territory or country affixed thereto. The records and judicial proceedings of the courts of any state or territory, or of any such country, shall be proved or admitted in any other court within the United States, by the attestation of the clerk, and the seal of the court annexed, if there be a seal, together with a certificate of the judge, chief justice, or presiding magistrate that the said attestation is in due form * * *. And the said records and judicial proceedings, so authenticated, shall have such faith and credit given to them in every court within the United States as they have by law or usage in the courts of the State from which they are taken."

The judgment which was offered in evidence by the respondent was duly exemplified as required by the fore-

going statute. It was attested by the clerk (fol. 94), under seal of the court (fol. 95) and there was attached thereto, a certificate of the presiding Justice of the Appellate Division of the Supreme Court of the Second Department (fol. 95), to the effect that the attestation of the judgment was in due form of law and by the proper officer (fol. 96).

A judgment by default is as conclusive as a judgment recovered after a contest.

> *Last Chance Mining Co.* vs. *Tyler Co.*, 157 U. S., 683, 691.

The courts have construed the foregoing article of the Constitution and statute as giving the same conclusive effect to a judgment of a state court in an action in a federal court, sitting in the same state, as would be given to it in the courts of another state.

> *Galpin* vs. *Page*, Fed. Cases, 5206, at page 1132;
> *Kansas City* vs. *Morgan*, 76 Fed., 429, 437;
> *United States* vs. *Eisenbeis*, 112 Fed., 190, 195;
> *Commercial Electric Supply Co.* vs. *Curtis*, 288 Fed., 657;
> *Strauss* vs. *American Publishers Assn.*, 201 Fed., 306;
> *Chinn* vs. *Foster-Milburn Co.*, 195 Fed., 158, 163;
> *Clay* vs. *Deskins*, 63 Fed., 330;
> *Cromwell* vs. *County of Sac*, 94 U. S., 351, 352;
> *Glencove Granite Co.* vs. *City Trust*, 118 Fed., 386, 389;
> *David Bradley Mfg. Co.* vs. *Eagle Mfg. Co.*, 58 Fed., 721, 722.

In *Butler* vs. *Eaton*, 141 U. S., 240, the receiver of a national bank sued a stockholder for the amount of a subscription for new stock. The defendant offered as a bar evidence of a judgment obtained by her in a state court determining that there was no valid subscription.

Such judgment was admitted in evidence in the United States Circuit Court and a decision was rendered against the receiver. This judgment was affirmed by this court.

In *Manhattan Trust Co.* vs. *Chicago Electric Traction Co.*, 188 Fed., 1006, Judge Kohlsaat held that a suit in a state court against a federal court receiver, in which the plaintiff's claim was reduced to judgment, was conclusive and binding in a federal court as to the receiver. He said, that inasmuch as the statute permitted a federal receiver to be sued in a state court, it would be a very useless act to give such permission if the judgment so obtained would not have a binding and conclusive effect in the receivership proceedings (p. 1010).

In *Stearns* vs. *Laurence*, 83 Fed., 738, decided by Circuit Judges Taft and Lurton and District Judge Charles D. Clark, it was held:

> "A finding made in an action against a bank and its president that the president purchased certain notes for the bank with knowledge of the condition on which they were given, is conclusive of such fact in a suit brought by a receiver subsequently appointed for the bank to charge the president with losses resulting from his negligent management" (syllabus).

See also:

> *Susquehanna Coal Co.* vs. *The Mayor*, 184 Fed., 941, 943.

As pointed out subsequently, the statutes which regulate comity are so important that they must be liberally construed.

> *American Ass'n.* vs. *Hurst*, 59 Fed., 1, 5.

See also:

> *Harkin* vs. *Brundage*, 276 U. S., 36.

II.

To refuse to recognize the validity of the judgment of the State Court and its conclusiveness upon the Receiver would be in effect a denial of the jurisdiction of the State Court and nullification of the proceedings in that Court.

Jurisdiction is the power not only to try, but to determine by a valid judgment the issues presented to the court and to enforce the judgment.

> *Central National Bank* vs. *Stevens*, 169 U. S., 432, 464;
> *Riggs* vs. *Johnson County*, 6 Wall., 166, 187;
> *Amy* vs. *Supervisors*, 11 Wall., 136;
> *United States* vs. *Nourse*, 9 Pet., 8, 28.

It was held by the Circuit Court of Appeals in the case at bar that the District Court was prohibited by Section 265 of the Judicial Code from enjoining the prosecution of the action brought in the State Court by respondent against the Morosco Company.

This was a recognition of the jurisdiction previously obtained by the State Court over the parties to said action and over the cause of action.

If the State Court had jurisdiction, it had the power to render a valid judgment and ordinarily to issue process for the enforcement of its judgment.

It has been held that the proceedings of a State Court, which, under Section 265 of the Judicial Code (former Section 720 of the Revised Statutes) shall not be enjoined by any United States Court, include the judgment and the execution issued thereon.

> *Mills* vs. *Provident Life & Trust Co.*, 100 Fed., 344, 346.

In *Sargent* vs. *Helton*, 115 U. S., 348, the same provision was under consideration and it was held that by said provision the Circuit Court was deprived of power to enjoin the sale of lands by a Sheriff under a judgment of a State Court, unless the injunction was authorized by the law relating to proceedings in bankruptcy.

The same view was taken in:

American Assn. vs. *Hurst*, 59 Fed., 1 (C. C. A., 6);

Piedmont Coal Co. vs. *Hustead*, 294 Fed., 247, 254 (C. C. A., 3).

It is true in the case at bar the property of the judgment debtor was taken into the custody of the United States District Court and its receiver before the respondent recovered his judgment in the State Court, and that, therefore, an execution issued under the judgment could not be levied on the same property.

But that fact does not affect the validity and conclusiveness of the judgment. If the receiver could refuse to recognize the validity of the judgment, the same result would be accomplished as if proceedings in the State Court had been enjoined.

Section 720 of the Revised Statutes, was enacted, as Judge Taft pointed out in *American Assn.* vs. *Hurst*, supra, to effectuate an important public policy, the same public policy which requires the United States courts to give full faith and credit to the judicial proceedings in each State.

A construction of the law which recognizes the right of a litigant in a State Court to prosecute his remedies free from interference by the national courts, and in the same breath would proclaim that any judgment obtained in the State Court shall be worthless in the national court, destroys that public policy.

In *Dillingham* vs. *Hawk*, 60 Fed., 494, the Circuit Court of Appeals for the Fifth Circuit construed the act of March 7, 1887 (now Section 66 of the Judicial Code), which permits a receiver appointed by a federal court to be sued in a State Court without leave of the court that appointed him, but adds that such suits shall be under the general equity jurisdiction of the appointing court. It was held that such supervisory power did not authorize the court appointing the receiver to deny the validity of the judgment; that the time when and the manner in which a judgment against a receiver shall be paid, the adjustment of equities between the several claimants against the property in the hands of the receiver and the just distribution of the funds according to the rights of the several parties interested in it must be subject to the general equity jurisdiction of the court.

But, it was said at page 497 (italics ours):

> "• • • the right to sue the receiver in the state court would be of little utility if its judgment could be annulled or modified at the discretion of this (federal) court, to which it is presented as a claim against the fund or property in the hands of the receiver. The judgment of the state court is conclusive as to the existence and amount of the appellee's claim, but the time and manner of its payment must be controlled by the court appointing the receiver. *A judgment may be complete and perfect, and have full effect, independent of the right to issue execution*" (citing Justice Story's decision in *Mills* vs. *Duryee*, 7 Cranch, 481).

This court, discussing the same statute, in *Texas & Pacific Ry.* vs. *Johnson*, 151 U. S., 81, at page 103, said:

> "• • • the right to sue without resorting to the appointing court, which involves the right to obtain

> judgment, cannot be assumed to have been practically valueless by the further provision in the same section of the statute which granted it."

As a further reason why United States District Courts cannot be allowed to nullify or modify the judgments of State Courts, it has been frequently pointed out that to do so would amount to the exercise of appellate jurisdiction.

In *Central Trust Co.* vs. *St. Louis, A. & T. Ry. Co.*, 41 Fed., 551, the Circuit Judge directed the receivers of a corporation appointed by the Circuit Court to allow, as of course, judgments obtained in State Courts against the receivers as well as against the corporation as adjudicated claims. The court was asked to qualify the order as to judgments by a provision that when a judgment was shown to be for a grossly excessive amount, the court would reduce it to a reasonable sum. As to this request, the court said, at page 555:

> "The state court has jurisdiction of the parties and of the subject-matter and its judgment against the receiver of this court is as final and conclusive as it is against any other suitor. The right to sue the receiver in the state court would be of little utility, if its judgment could be annulled or modified at the discretion of this court. It is open to the receiver to correct the errors of the inferior courts of the state by an appeal to the Supreme Court. But this court is not invested with appellate or supervisory jurisdiction over the state courts and cannot annul, vacate or modify their judgments."

This decision was approved in *Wilcox* vs. *Jones*, 177 Fed., 870, 874 (C. C. A., 4).

See also:

Rooker vs. *Fidelity Trust Co.*, 263 U. S., 413, 416;
Essanay Film Co. vs. *Kane*, 258 U. S., 358, 361.

Not only would refusal to recognize the state court judgment as a valid liquidation of the respondent's claim against the receiver result in a nullification of the proceedings in that court despite the express prohibition contained in section 265 of the Judicial Code; but it would moreover encourage a multiplicity of actions and would produce friction and lack of harmony between two courts of concurrent jurisdiction operating in the same territory.

Baer vs. *McCullough*, 176 N. Y., 97, 103.

As a practical matter, viewed from the angle of economy and expediency, the Supreme Court of New York, Queens County, was as well equipped and qualified to liquidate this claim as was any Master appointed by the District Court. This would eliminate the payment of Master's fees, stenographer's minutes, etc. The only expense involved in the trial of the issue was a jury fee. In no event could a trial in the state courts delay liquidation of the estate.

Penn. Steel Co. vs. N. Y. City Ry., 229 Fed., 120 (C. C. A., 2), cited in the opinion of Judge Swan in 19 F. (2d), 766, 769.

And furthermore, it would have secured to the plaintiff his constitutional right to a trial by jury.

III.

The Petitioner was bound to recognize the validity of the respondent's claim even though that claim had been adjudicated in a state court.

The theory of the Petitioner and of the per curiam opinion of May 7, 1928, is unsound.

The Petitioner rests his case solely upon the proposition stated in the *per curiam opinion* (26 F. [2d], 247):

> "That the liquidation of claims is a part of the distribution of the estate since it determines how much each creditor shall get, and that the distribution of the estate is part of what is usually understood as jurisdiction over the res."

The Petitioner assumes this to be a correct statement of the law, and thereupon concludes that the opinion of Judge Swan (19 F. [2d], 766) contains certain inconsistencies.

Conceding that *distribution* is part of the jurisdiction over the *res*, it is submitted that *liquidation of claims* is *not* a part of jurisdiction over the res, rather, that it has always been held to be a part of what is characterized as jurisdiction *in personam*, and that since liquidation of claims does not interfere with the Federal Court's jurisdiction over the *res*, it is within the power of the state court to render a judgment which must be recognized by the receiver as a valid liquidation of the judgment creditor's claim.

It was expressly decided in *Byers* vs. *McAuley*, 149 U. S., 608 (which will be more closely examined infra), that although a Federal Court cannot direct the distribution of an estate administered in the State Probate Court, the Federal Court may, where the proper diversity of citizenship exists, determine the amount to which

a distributee is entitled. In reaching that conclusion Mr. Justice Brewer said at page 619:

> "While the validity of a claim against the receiver may be established in the State Court, the administration of the property in the hands of the receiver remains with the Federal Court whose officer he is, and the amount the claimant will receive from the proceeds of the property in the hands of the receiver is not settled by the State Court, which only determines the validity and extent of the demand, but rests upon the result of the administration, as ordered by the Federal Court."

The doctrine which prohibits one court from interfering with a res in the custody of another court of concurrent jurisdiction is well known to the law, and is by no means limited to receiverships. The same doctrine exists with respect to the administration of decedents' estates.

> *Byers* vs. *McAuley*, 149 U. S., 608;
> *Waterman* vs. *Canal & La. Bk. Co.*, 215 U. S., 33;
> *Gilmore* vs. *Gilmore*, 18 F. (2d), 614.

Yet in those cases the very doctrine contended for by the respondent namely that the state judgment subsequently secured is a binding adjudication as a liquidation of the claim, has been recognized in several cases.

> *Byers* vs. *McAuley*, supra;
> *Allen* vs. *U. S.*, 285 Fed., 678, 684 (c 1);
> *O'Connor* vs. *Slaker*, 22 F. (2d), 147, 149 (c 8);
> *Green's Adm'x.* vs. *Creighton*, 23 How., 90.

In *Byers* vs. *McAuley*, 149 U. S., 608 (supra), the subject was thoroughly considered. There the administra-

tor had a sum of money ready for administration. A hearing was set for Mar. 29, 1887 in the Orphans' Court of Allegheny County in Pennsylvania. On Mar. 28, plaintiffs, non-residents of the State of Pennsylvania, filed a bill in the Federal Court asking that the probate of the will be set aside; that the administrator be enjoined from distributing the estate, and that the surplus be distributed to plaintiffs and to the others entitled thereto. Some of the other persons "entitled thereto" were citizens of Pennsylvania. The lower court determined all the distributees and ordered the administrator to distribute accordingly. On appeal to this court, this decree was reversed. This court held that although it was proper for the federal court to determine the validity and amount of the plaintiff's claim, there being the proper diversity of citizenship, it could not direct the distribution. The former was held not to be an interference with the *res* although the latter would be.

No case has ever held contrary to the above. All the cases ever decided, with the single exception of *Evans* vs. *Illinois Surety Co.*, 319 Ill., 105, have applied that doctrine to facts identical to those at bar. As clearly pointed out by Judge Swan, the decision in the Evans case rested on a misconception. The other cases cited in Judge Swan's opinion squarely uphold the decision below. They are numerous, and well considered.

Pine Lake Iron Co. vs. *La Fayette Car Works*, 53 Fed., 853;

Mercantile Trust Co. vs. *Pittsburgh & W. R. Co.*, 29 Fed., 732;

Pringle vs. *Woolworth*, 90 N. Y., 502;

Taylor vs. *Gray*, 59 N. J. Eq., 621;

St. Louis, etc. Ry. vs. *Green*, 183 S. W., 829, 833 (Tex. Civ. App.).

To the same effect see the following treatises:

Alderson's Beach on Receivers, §486;
High, Injunctions (4th ed.), §318;
Tardy's Smith on Receivers (2d ed.), §29;
1 Clark, Receivers (1918), §705;
3 Street, Federal Eq. Practice (1909), §2569.

Once it is established that the action brought in the State Court in the case at bar was not one *in rem*, it is not possible to hold that the Federal court can ignore the State court's decision so far as it fixes the validity of a claim and the amount due.

There is no constitutional authority for drawing to the Federal courts all controversies in which a Federal receivership is in any way involved.

Calhoun vs. *Lanaux*, 127 U. S., 634;
United States Mortgage Co. vs. *Missouri K. & T. Ry.*, 269 Fed., 497 (C. C. A., 5);
Equitable Trust Co. vs. *Denny*, 24 F. (2d), 169 (C. C. A., 7);
Gableman vs. *Peoria etc. Ry.*, 179 U. S., 335;
Straine vs. *Bradford Savings Bank & T. Co.*, 88 Fed., 571 (C. C. A., Vt.).

In *Calhoun* vs. *Lanaux*, supra, a proceeding was instituted in a state court to cancel a mortgage. Pending the action receivers were appointed for the defendant corporation by the Federal Court. The receivers were notified of the State Court proceeding, but did not defend. The State Court granted a decree cancelling the mortgage. On writ of error it was contended before this court that the appointment of the receiver in the Federal Court ousted the jurisdiction of the State Court. This court affirmed the decision below holding that the jurisdiction of the State Court is concurrent with that of the

Federal Court even after the appointment of the receiver so long as there is no *actual* interference with the *res*.

Mr. Justice Bradley there said (127 U. S., 634, 639):

> "In the case of Bethel vs. Pahquioque Bank, 4 Wall., 383, we decided that suit might be brought in a state court against a national bank, although it had made default in paying its circulating notes and a receiver of a bank had been appointed by the comptroller of the currency. A fortiori, a company may be sued whose assets have been placed in the hands of a receiver in an ordinary suit in chancery."

See also:

> *Butler* vs. *Eaton*, 141 U. S., 240, 242;
> *Lyon Bonding Co.* vs. *Karatz*, 262 U. S., 77, 90.

In Bank of Bethel vs. Pahquioque Bank, 81 U. S., 383, a [illegible] appointed [illegible] National Bank of Bethel, Connecticut, on Feb. 26, 1868. On May 30, 1868, after the receiver disallowed plaintiff's claim, the latter brought an action of assumpsit against the Bethel Bank in the State Court. That court gave judgment to the plaintiff for the full amount of its claim. It was there contended, as here, that after the appointment of the receiver the courts of the United States alone had jurisdiction; that the Bank could not be sued after the appointment of the receiver; and, that the decision of the receiver in disallowing the plaintiff's claim was conclusive on the parties. Nevertheless this court affirmed the decision of the Connecticut Supreme Court. This court considered the following provisions of the act of June 3, 1864 (13 Stat., 99), with respect to actions involving National banks:

SEC. 50. "That on becoming satisfied * * * that any association has refused to pay its circulating notes * * * the Comptroller of the Currency may forthwith appoint a receiver (who shall take possession of all the assets of the association) and upon the order of a court of competent jurisdiction may sell or compound all bad or doubtful debts, and on a like order sell all the real and personal property of such association * * * And from time to time the Comptroller * * * shall make a ratable dividend of the money so paid over to him on all such claims as may have been proved to his satisfaction, or adjudicated in a court of competent jurisdiction."

SEC. 57. "That suits, actions, and proceedings against any association, under this act, may be had in any circuit, district, or territorial court of the United States, held within the district in which such association may be established; or in any state, county, or municipal court in the county or city in which said association is located; having jurisdiction in similar cases. Provided, however, that all proceedings to enjoin the comptroller under this act shall be had in a circuit, district, or territorial court of the United States, held in the district in which the association is located."

Mr. Justice Clifford pointed out that since the Bank was organized under the laws of Congress it ordinarily could be sued only in the Federal courts. It was therefore the purpose of section 57 (supra) to remove this immunity from being sued in the state courts. They thereupon became subject to suit in the state courts to the same extent (but no further) that other similar associations organized under state laws were subject thereto. Thus the defendant Bank of Bethel was in the same posi-

tion as the Morosco Company in the case at bar. The only statutory provision covering the comptroller (who would be analogous to the receiver in the case at bar) was section 50 quoted above to the effect that he "shall make a ratable dividend * * * on all such claims as may have been proved to his satisfaction or adjudicated in a *court of competent jurisdiction.*" There is no statutory definition of the term "court of competent jurisdiction," and it was therefore necessary to rely on the common law governing receivers of associations which were subject to suit in the state courts (i.e., associations not organized under laws of Congress). Section 57 of the Act of 1864 (quoted above) related only *to associations.* It said nothing about their *receivers.* Accordingly the defendant Bank argued that claims "adjudicated in a court of competent jurisdiction" meant those adjudicated before the receiver was appointed. This court, however, held that the receiver must recognize the judgment of a state court, although rendered subsequent to the appointment of the receiver, as determining the amount of the claim, although not conferring a lien. Mr. Justice Clifford relied not only on the statute, but also on the "*analogies of the law.*" He said, at page 401:

> "Attempt is made to show that the adjudicated claims there referred to are only such as had been adjudicated before the receiver was appointed, but the court is of the opinion that such a construction is not warranted either by the language employed, or the subject-matter to which it relates, or the purpose to be accomplished, or by the analogies of the law or the usual rules of interpretation which courts apply in ascertaining the meaning of a legislative provision of a remedial character. Tested by any one or all of these criterions the court is of the opinion that the construction assumed by the defendants

is quite too narrow to carry into effect the intention which the framers of the provision had in view at the time it was adopted. Claims presented by creditors may be proved before the receiver, or they may be put in suit in any court of competent jurisdiction, as a means of establishing their validity and to determine the amount owed by the association, but the judgment when recovered will not give the creditor any lien on the property of the delinquent association, nor secure to the judgment creditor any preference over other creditors whose claims are proven before the receiver. All alike must await the action of the Comptroller of the Currency, and be content with a just and legal distribution of the proceeds of the assets collected by the receiver and liquidated by the comptroller according to the act of Congress in such case made and provided."

Thus again, this court, recognizing the distinction between actions in rem and those in personam where a conflict arose between courts of concurrent jurisdiction held that a judgment against a corporation after the appointment of a receiver, was a judgment in personam, and was binding upon the receiver as a valid determination of the amount due.

In view of the express adjudications in other courts relied on by Judge Swan in his opinion (19 Fed. [2d], 766, 768) and of the eminent authorities there cited, and in view of the analogous decision of this court where the same question was presented in dealing with decedent's estates, receiverships of national banks, and even ordinary Equity receiverships as in the case at bar where the judgment against the corporation was in personam (*Calhoun* vs. *Lanaux*, supra, 127 U. S., 634), it is submitted that the opinion of Judge Swan represents a

well-settled doctrine in the law of receiverships. The judgment below should therefore be affirmed.

Respectfully submitted,

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Respondent.